IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 9TH JULY 2007 / 18TH ASHADHA 1929

CRP.No. 582 of 2007(E)

AGAINST THE ORDER DATED 07/12/2006 IN EP.55/2005 IN OS.12/1986 of MUNSIFF COURT, PALA

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REVN. PETITIONER: DECREE HOLDER/PLAINTIFF:

P.V. JOSE,
PAYYAPPALLIL HOUSE, LALAM KARA,
LALAM VILLAGE, PALA P.O.

BY ADV. SRI.RAJU K.MATHEWS

RESPONDENTS: JUDGMENT DEBATORS/DEFENDANTS:
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1. VARKEY SEBASTIAN,
MATTATHIL HOUSE, PALA P.O., LALAM KARA.

2. DEVASIA VARKEY,
MATTATHIL HOUSE, PALA P.O., LALAM KARA.

BY

THIS CIVIL REVISION PETITION HAVING COME UP FOR ADMISSION ON 09/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.N. KRISHNAN, J.

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C.R.P. NO. 582 OF 2007

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Dated this the 9th day of July, 2007.

O R D E R

This revision petition is preferred seeking to set aside the order passed by the Munsiff, Pala in E.P.55/05. The said petition is filed against the judgment debtors who are alleged to have violated the decree of permanent prohibitory injunction passed in the case. There was a decree and the contention is that in violation of the decree the building therein has been pulled down and thereby a deliberate violation of the order of the Court has been committed. The Court below examined the entire materials available. On the side of the petitioner PWs.1 and 2 were examined. Admittedly, PW1 does not have any direct knowledge. PW2 is later examined to show that he has seen people pulling down the building. It has to be remembered that he is a person who is residing two kilometers away from the building and according to him accidentally he happened to cross through that road after attending a Ganamela. If really there was a witness for this alleged demolition it should have been brought in the very first instance itself and even according to PW2 he has informed

this to PW1 only on 10th February, 2006 which is rightly nine months after the alleged incident. So the Court rightly found there is nothing to prove the same.

2. The contention of the other party that it had fallen down on account of dilapidated condition has been accepted by the Court. The building is situated on the side of a road. Therefore, Municipality had given notice that the unfallen portion of the building has also to be removed otherwise it will cause security risk to the passers thereby. Therefore, in obedience to the order of the Municipality that was also done.

3. In these types of cases what is to be considered is whether there is deliberate willful violation of the order of the Court. It can be seen from the materials available on account of natural causes the building had fallen down and on account of the direction of the statutory authority they were forced to remove it. It is contended that the persons should have revealed about the direction of the Court. Whatever it may be, when a building has fallen down and the remnants remained which will cause danger to the passers thereby, one cannot order either the Municipality nor the petitioners not to demolish the building. So I am convinced that the Court below has only approached the matter

only the correct perspective and negatived the case of the petitioners that judgment debtors violated the decree of the Court. Therefore, the C.R.P. is dismissed.

Independent proceedings pending against the challenge of the order of the Municipality has to be disposed of independently and observations made in this writ petition may not be taken into consideration in that proceedings.

M.N. KRISHNAN, JUDGE.

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